exercised at the time of the assignment. It would be otherwise in case the holder of the power has a contract *right* also that the rents shall not be assigned. If the assignment antedates the power, as it did in the principal case, it nullifies the power altogether, and rents collected under the supposed power belong to the previous assignee. *Harris v. Taylor* (1898) 35 App. Div. 462, 54 N. Y. Supp. 864. Such an assignee can sue the tenant for the rents. *Thomson v. Erskine* (1901, App. T.) 36 Misc. 202, 73 N. Y. Supp. 166. The assignment is valid even though the assignee's right is conditional upon default by the mortgagor. *State Bank v. Cohen* (1910, Spec. T.) 68 Misc. 138, 123 N. Y. Supp. 747. It would seem to be entirely immaterial whether the assignment is effected by a separate document, as in *Harris v. Taylor,* or by appropriate words in the mortgage deed, as in *Thomson v. Erskine* and in the principal case. In the latter case, however, the provision may be given the interpretation that the words of assignment are merely redundant and refer only to rents and profits collected after possession has been taken by the mortgagee or by his receiver. *In re Banner* (1907, D. C. S. D. N. Y.) 149 Fed. 936; *In re Israelson* (1916, S. D. N. Y.) 230 Fed. 1000; *Abrahams v. Berkowitz* (1911) 146 App. Div. 563, 131 N. Y. Supp. 257. This was the construction given in the principal case, with the result that both mortgagees were held to have no right by assignment but only a power to create rights by entry or by a receivership, and the junior mortgagee was preferred because he exercised his power first. Such an interpretation may be reasonable, but the opinion of the lower court to the contrary, reported in (1915) 166 App. Div. 68, 151 N. Y. Supp. 613, is very persuasive.

NEGLIGENCE—INJURY TO VOLUNTEER IN WHOSE PRESENCE THE DEFENDANT HAS AN INTEREST.—The plaintiff, a professional dancer, by consent of the defendants, voluntarily attended and took part in the rehearsals for a revue to be given by the defendants, in the hope that she would thereby obtain an engagement in the revue when produced. She was under no contract with the defendants. While attending a rehearsal, she was injured by the negligence of a servant of the defendants. *Held,* that the plaintiff was a "volunteer with a private interest," and as such not in common employment with the defendants' servant, and so was entitled to recover her damages from the defendants. *Hayward v. Moss Empires Limited* (1917, C. A.) 117 L. T. Rep. 523.

Ordinarily a mere volunteer assisting in the master's work is, as regards the master, in no better position than a trespasser, and cannot claim higher protection than that the master himself, after learning of his presence, shall not wilfully or carelessly injure him. *Degg v. Midland R. R. Co.* (1857, Exch.) 1 H. & N. 773. Consequently, if injured by the negligence of a servant, he cannot recover against the master. *Eason v. S. & E. T. R. R. Co.* (1886) 65 Tex. 577; see (1918) YALE LAW JOURNAL, 415. A mere licensee stands in much the same position. *Benson v. Baltimore Traction Co.* (1893) 77 Md. 535, 26 Atl. 973. But a licensee who is on the premises on the owner's business, or on business in which both have a common interest, is entitled to the same rights as an invitee. *Holmes v. N. E. R. R.* (1871) L. R. 6 Ex. 123. There being no difference in rights, there seems little reason for the distinction in terms drawn by the English cases. And American cases call such persons invitees; in fact many cases seem to say that this is the test of an invitee: whether he is there for the benefit of the owner, or whether there is some mutuality of interest in the subject of the visit. *Plummer v. Dill* (1892) 156 Mass. 426, 31 N. E. 128; *Benson v. Baltimore Traction Co., supra; Clopp v. Mear* (1890) 134 Pa. 203, 19 Atl. 504. To such persons, English and American authorities agree, the owner is under a general duty of care to prevent injury; he is

responsible to them for his own negligence and that of his servants. *Indermaur v. Dames* (1867, Ex. Ch.) L. R. 2 C. P. 311; *Clopp v. Mear, supra.* Had the plaintiff gone on the stage without invitation, merely to apply for employment, she might have been considered a mere licensee. *Cf. Larmore v. Crown Point Iron Co.* (1886) 101 N. Y. 391, 4 N. E. 752. On the other hand, in the actual case her position approached closely that of a fellow servant, and to apply the fellow servant rule to her would have involved no great extension of it. The rule was first developed as an application of the broader doctrine of assumption of risk. See *Farwell v. Boston & Worcester Ry. Co.* (1842, Mass.) 4 Met. 49; *Hutchinson v. York, etc. Ry. Co.* (1850) 5 Ex. 343, 351 ff. And the view that assumption of risk necessarily depends on contract seems unsound. 3 Labatt, *Master & Servant* (2d ed.) sec. 1285 ff. It is better explained along the lines of *volenti non fit injuria.* But the fellow servant rule itself has been much criticized as an unwarranted outgrowth of this principle, and a further extension of it, however slight, is hardly to be desired.

PROXIMATE CAUSE—INTERVENING ACT OF INDEPENDENT WRONGDOER.—As a result of the defendant's negligence the plaintiff was knocked unconscious and his goods spilled from his wagon. While he was unconscious, some bystander stole the goods. The plaintiff brought action against the defendant for the loss. *Held,* five judges dissenting, that he could recover for the goods which were stolen, since the accident was the proximate cause of the theft. *Brower v. New York Cent. & H. R. R. Co.* (1918, N. J. Ct. Err.) 103 Atl. 166.

A burglar broke into the plaintiff's house and left scattered about and unprotected certain clothing of the plaintiff. While thus exposed, it was damaged by moths. Having been insured by the defendant company against "direct loss by burglary," the plaintiff sued for the loss caused by the damage to the clothing. *Held,* six judges dissenting, that he could not recover, since the damage was not a direct result of the burglary. *Downs v. New Jersey Fidelity, etc., Ins. Co.* (1918, N. J. Ct. Err.) 103 Atl. 205.

While it is impossible to reduce to consistency the mass of decisions on the question of proximate cause in torts, and especially on the effect of the intervening act of an independent wrongdoer, the better view is that the first wrongdoer may still be held liable for the damage, if the intervening act was reasonably to be anticipated. *Lane v. Atlantic Works* (1872) 111 Mass. 136; *Daneschocky v. Sieben* (1917, Mo. App.) 193 S. W. 966. The tendency to hold only the last wrongdoer has been much stronger where his act was not merely negligent but also wilful and criminal; but even in such cases there is respectable authority for the view that the defendant should be held if the wilful intervention of the third person was a natural and probable sequence. Salmand, *Torts* (4th ed.) 134; *Henry v. Dennis* (1883) 93 Ind. 452; *contra, Milostan v. Chicago* (1909) 148 Ill. App. 540. The *Brower* case appears to be a sound application of this principle. Nor is it necessarily inconsistent with the decision in the *Downs* case. Were the burglar being sued, no doubt his acts might have been held to be the proximate cause of the damage to the plaintiff's clothes; but the actual issue in the *Downs* case was the question of construction—the meaning of the words "direct loss by burglary." In construing policies insuring against "direct loss by fire," the courts have said that the word "direct" has no significance, and, whether used or not, the fire must be the proximate cause of the loss or damage. *O'Connor v. Queen Ins. Co.* (1909) 140 Wis. 388, 122 N. W. 1038; see also, *Bird v. St. Paul Fire Ins. Co.* (1917, N. Y. App. Div.) 167 N. Y. Supp. 707. Fire insurance contracts are construed strongly in favor of the insured, and the company has been held liable for goods stolen during a fire as the proximate result thereof. *Witherall*